

CHAPTER 38
SEX OFFENDER MANAGEMENT AND TREATMENT

201—38.1(692A,903B) Application of rules. The following rules apply to sex offender registration and hormonal intervention therapy.

201—38.2(692A,903B) Definitions.

“Aggravated offense” means a conviction for any of the following offenses:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
4. Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.
5. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
6. Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph “d.”
7. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
8. Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
9. Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph “a.”

“Criminal offense against a minor” means any of the following criminal offenses or conduct:

1. Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.
2. False imprisonment of a minor, except if committed by a parent.
3. Any indictable offense involving sexual conduct directed toward a minor.
4. Solicitation of a minor to engage in an illegal sex act.
5. Use of a minor in a sexual performance.
6. Solicitation of a minor to practice prostitution.
7. Any indictable offense against a minor involving sexual contact with the minor.
8. An attempt to commit an offense enumerated in this rule.
9. Incest committed against a minor.
10. Dissemination and exhibition of obscene material to minors in violation of Iowa Code section 728.2.
11. Admitting minors to premises where obscene material is exhibited in violation of Iowa Code section 728.3.
12. Stalking in violation of Iowa Code section 708.11, subsection 3, paragraph “b,” subparagraph (3), if the fact-finder determines by clear and convincing evidence that the offense was sexually motivated.
13. Sexual exploitation of a minor in violation of Iowa Code section 728.12, subsection 2 or 3.
14. An indictable offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs “1” through “13” of this definition.

“Hormonal intervention therapy” means a comprehensive treatment program inclusive of education, counseling, and pharmaceutical applications to control sexual deviant behavior.

“Offender” means a person who is required to register with the Iowa sex offender registry.

“Other relevant offense” means any of the following offenses:

1. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.
2. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.
3. Indecent exposure in violation of Iowa Code section 709.9.
4. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs “1” through “3” of this definition if committed in this state.

“Risk assessment” means a comprehensive assessment of an offender’s potential risk to the community.

“Serious sex offense” means a criminal offense as defined in Iowa Code section 903B.1(4).

“Sexual exploitation” means sexual exploitation by a counselor or therapist under Iowa Code section 709.15.

“Sexually violent offense” means any of the following indictable offenses:

1. Sexual abuse as defined under Iowa Code section 709.1.
2. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
3. Sexual misconduct with offenders in violation of Iowa Code section 709.16.
4. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.
5. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs “1” through “4” of this definition if committed in this state.

“Sexual offense” means a criminal offense as defined in Iowa Code Supplement section 692A.1 as amended by 1998 Iowa Acts, Senate File 2292.

201—38.3(692A) Sex offender risk assessment.

38.3(1) *Risk assessment instrument.* All required risk assessments shall be conducted utilizing the “Iowa Sex Offender Risk Assessment Instrument and Companion Guide” as approved by the department of corrections (DOC), division of criminal investigation of the department of public safety (DCI), and the department of human services. Upon request, these documents will be made available by the department of corrections. The risk assessment score will be determined following a review of the following documents which may include: presentence investigation report, court documents, clinical assessments, treatment records, polygraph reports, plethysmograph reports, employee records, school records, military records, and child protection services records of the department of human services. The risk assessment score is used to determine the level of risk for community notification purposes as follows:

- a. The assessed individual is “low risk” to the community.
- b. The assessed individual is “at risk” to the community.

38.3(2) *Offenses requiring completion of risk assessment.* The department of corrections, department of human services, and the division of criminal investigation of the department of public safety shall complete the risk assessment on all offenders under each agency’s authority in accordance with the requirements of Iowa Code section 692A.13A.

A risk assessment shall be conducted on all offenders who have a conviction of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court, or on a person required to register in another state under the state’s sex offender registry. The risk assessment should be completed within 45 days prior to release from custody or upon placement on probation, parole, or work release.

38.3(3) *Risk assessment completion procedures.*

a. *Institution risk assessments.* Risk assessments should be conducted on offenders being released from the institution. These risk assessments should be forwarded to DCI within 45 days prior to the offender’s release from the institution. Risk assessments conducted for any other purpose should not be forwarded to DCI.

b. *Judicial district risk assessments.* Judicial district departments should complete risk assessments on probation offenders within 45 days of receipt of the case and forward the assessments to DCI. Additional risk assessments conducted during the supervision period should not be forwarded to DCI unless the offender’s risk level has changed. This also applies when the offender is discharged. When any offender is revoked or discharged, DCI should be notified that the offender is either incarcerated or no longer under supervision in the community.

c. *Parole/work release risk assessments.* Risk assessments should be conducted by the institution prior to the offender's release. Community supervision officers are not required to conduct reassessments unless they believe the risk level has changed. If the risk assessment is not included in the parole/work release packet, the officer should contact the institution for a copy. If, for some reason, a risk assessment was not completed prior to release, the risk assessment shall be completed by the supervising probation/parole officer in conjunction with institution staff.

38.3(4) Notification of right to appeal.

a. When a risk assessment has been completed, the department of corrections shall notify, or cause to be notified, the offender of the finding by providing to the offender copies of the risk assessment and the "Notice of Risk Assessment Findings" and "Appeal Form."

b. Judicial district department of correctional services shall notify the offender by personal service or certified mail of the risk assessment finding. The notification shall include the risk assessment and the "Notice of Risk Assessment Findings" and "Appeal Form." No additional notice is required.

Notice is deemed provided even if the offender refuses delivery or if mail is undeliverable because the offender has not complied with registry requirements to provide a current address. If the notice is returned to DOC as undeliverable, the assessment shall be forwarded to the DCI sex offender registry within 48 hours.

The notice shall contain the following information:

- (1) A copy of the completed risk assessment.
- (2) The result of the risk assessment.
- (3) A description of the scope of affirmative public notification, which may result from the risk assessment.
- (4) That unless a written appeal is received on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant.
- (5) That the offender may appeal the risk assessment decision by filing a written appeal and mailing or serving it on the department of corrections at an address prescribed on the notice, so that it is received on or by the date mentioned in the notice.
- (6) That if appeal is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice there will be no affirmative public notification until and unless the result of the risk assessment is affirmed or is modified through the appeal process.
- (7) That the appeal shall be in writing, shall fully address each issue challenged, and shall be limited to the following issues:
 1. Whether the risk assessment factors have been properly applied; or
 2. Accuracy of the information relied upon to support the assessment findings; or
 3. Errors in the procedure.
- (8) That if the department does not receive a written appeal within the time guidelines set forth in this rule the department shall notify the division of criminal investigation of the results of the risk assessment by providing a copy of the risk assessment and "Notice of Risk Assessment Findings/Public Notification" to the division of criminal investigation.

38.3(5) Appeal process.

a. When the department receives a written appeal, the department shall refer the matter to an administrative law judge or a designated presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial findings to the administrative law judge or presiding officer with the written appeal. The administrative law judge or presiding officer shall set a hearing within seven calendar days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

b. Any document that is confidential pursuant to statute, rule, regulation, or other authority will be considered confidential and may be subject to a protective order by motion of any party to the proceeding. The hearing itself may be conducted in camera.

c. Rule 201—12.16(17A), which governs the introduction and consideration of evidence, shall apply to proceedings under this subrule. The administrative law judge or presiding officer may conduct the appeal hearing at any location and may use facsimile machines, telephones, two-way interactive video or other electronic means to conduct any or all hearings. An electronically produced document shall have the same force and effect as an original document.

d. The hearings shall be mechanically recorded. The recording or transcription thereof shall be filed and maintained by the department of corrections for at least five years from the date of the hearing.

e. The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

f. After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue within 14 calendar days a written order affirming, reversing, or modifying the result of the risk assessment. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party.

g. The registrant, prosecutor, or agency may appeal the administrative law judge's or presiding officer's order to the director of the department of corrections or the director's designee. The appeal must be served in writing within 14 calendar days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision, and the department of public safety may undertake affirmative public notification if warranted by the result of the risk assessment.

h. The director of the department of corrections or the director's designee shall consider an appeal on the record made before the administrative law judge or presiding officer. The director or designee shall not consider any additional facts on appeal. The director or designee may request written briefs or oral argument in an appeal. The director or designee shall issue a written decision affirming, reversing, or modifying the order of the administrative law judge or presiding officer. A copy of the decision shall be promptly mailed to each party. The decision of the director or designee constitutes final agency action.

i. Upon disposition of the appeal or 20 days after the final decision of the administrative law judge or presiding officer, all information, including the risk assessment, "Notice of Risk Assessment Findings/Public Notification" and appeal information, and any other documentation, shall be forwarded to the sex offender registry program of the department of public safety.

38.3(6) Public notification. Affirmative public notification procedures are published in department of public safety rules, 661—Chapter 8.

38.3(7) Training requirements. All agency personnel conducting sex offender risk assessments shall complete the training program as developed and provided cooperatively by the responsible agencies.

38.3(8) Reporting requirements. Assessment completion and notification of results to the department of public safety sex offender registry program shall be completed within 45 days of anticipated release or supervision placement as follows:

- a. Submission of completed original "Iowa Sex Offender Risk Assessment."
- b. Form F-1 (Notification of Sex Offender Risk Assessment Findings/Public Notification).
- c. Forms F-2 and F-3 if applicable (Appeal and Appeal Response forms).
- d. Pertinent assessment/appeal findings documentation.
- e. Forward to:

Iowa Division of Criminal Investigation
Attn: Iowa Sex Offender Registry
Wallace State Office Building
Des Moines, Iowa 50319
(515)281-4976 or fax (515)281-4898

38.3(9) Records maintenance.

a. Original sex offender registration and risk assessment documents shall be sent to the department of public safety sex offender registry program.

b. Copies of the sex offender registration and risk assessment documents shall be permanently maintained in the offender master file maintained by the responsible agency.

38.3(10) Additional rules. Department of public safety rules regarding the Iowa sex offender registry are published in Division III of 661—Chapter 8.

201—38.4(903B) Hormonal intervention therapy.

38.4(1) Affected offenders. All offenders convicted of a “serious sex offense” in which the victim was a child who, at the time the offense was committed, was 12 years of age or younger; or offenders convicted of a second or subsequent offense may be required to undergo hormonal intervention therapy as ordered by the court or board of parole in accordance with the provisions of 1998 Iowa Acts, Senate File 2398, section 21.

38.4(2) Agency responsibility. The department of corrections, judicial districts’ departments of correctional services, and the board of parole responsibilities are defined in 1998 Iowa Acts, Senate File 2398, section 21.

38.4(3) Assessment of affected offenders.

a. *Psychosexual assessment.* A psychosexual assessment shall be conducted on all “affected” offenders, as a part of the presentence investigation (PSI) prior to sentencing or upon entry into judicial district department of correctional services supervision or institutional placement.

(1) The psychosexual assessment shall be conducted by or under the direction of:

- A licensed psychologist; or
- A person specifically trained and experienced in the professional administration, scoring and interpretation of psychological tests (graduate level coursework in testing and assessment); or
- A staff member that meets the experience and educational requirements of the Iowa department of personnel or Iowa community-based corrections psychologist classification.

(2) The psychosexual assessment shall include:

- Tests of emotional and mental stability.
- I.Q. to measure capability.
- Measure of denial of deviant sexual characteristics.
- Polygraphy by July 1, 1999.
- Plethysmography (optional).

(3) The assessment shall follow the department of corrections standardized format and shall include a determination as to the need and effectiveness of hormonal intervention therapy as well as treatment recommendations.

b. *Medical assessment.* If hormonal intervention therapy is recommended as an appropriate treatment component, the offender shall receive a medical assessment to determine biological factors as related to hormonal intervention therapy.

38.4(4) Pharmaceuticals and distribution. The director of corrections may contract the purchase and distribution process to reduce pharmaceutical costs and ensure effective distribution and management of all pharmaceuticals related to the hormonal therapy program.

38.4(5) Educational/treatment programming.

a. Hormonal intervention therapy is to be utilized in conjunction with a sex offender educational/treatment program (SOTP). The offender should be involved in concurrent cognitive-behavioral treatment. In all cases where the treatment plan includes hormonal therapy, the plan shall also include monitoring and counseling.

b. All institutional or community-based corrections SOTP programs shall meet Iowa board for the treatment of sexual abusers (IBTSA) standards by July 1, 1999.

38.4(6) Application of hormonal therapy.**a. Utilization of hormonal therapy.**

(1) Therapy shall utilize medroxyprogesterone acetate (MPA) or other approved pharmaceutical agents.

(2) Therapy shall be initiated as soon as reasonably possible after the offender is sentenced.

1. If the offender is incarcerated within a local jurisdiction (jail, residential facility), the judicial district department of correctional services shall coordinate initiation of treatment prior to the release of the offender from custody.

2. If the offender is incarcerated within the department of corrections, initiation of treatment shall be determined by department of corrections medical staff.

(3) Requests for hormonal therapy by the offender when the aforementioned criteria are not met shall be reviewed for consideration by the agency of jurisdiction.

(4) At any time during the course of supervision, the agency of jurisdiction may conduct a reassessment to determine if hormonal therapy should be considered or reconsidered as part of the treatment plan.

b. Monitoring/termination of hormonal therapy.

(1) Monitoring. The agency of jurisdiction shall continue to monitor the offender's therapy throughout the offender's confinement or supervision. The agency of jurisdiction may adjust medication, initiate other medication, or continue prescribed therapy with medical approval.

(2) Termination. Hormonal therapy may be discontinued only by the medical authority, with consent of the supervising officer. Termination requires a reassessment conclusion that the therapy has been determined ineffective or is no longer necessary.

38.4(7) Offender fees. Offenders are required to pay a reasonable fee for the costs related to hormonal therapy. Offender fees shall be based on the offender's ability to pay as determined by the supervising office.

38.4(8) Maintenance/transfer of records. Offender file information shall be available and shared upon request between responsible agencies including court of jurisdiction.

These rules are intended to implement Iowa Code chapter 692A.

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CHAPTER 39**Reserved**